

**Declaration of Restrictive Covenants and Easement  
The Preserve, Westbrook Development and Use Limitations  
River Sound Development, LLC**

**PLANNING  
COMMISSION  
EXHIBIT #36b**

THIS GRANT AND DECLARATION made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by River Sound Development, LLC, a \_\_\_\_\_ Limited Liability Company of \_\_\_\_\_, Connecticut, on behalf of its successors and assigns forever ("RSD"), to and on behalf of the Town of Westbrook, a Connecticut municipal corporation of Westbrook, Connecticut to itself and to and on behalf of its successors and assigns forever.

### **Background**

RSD is the owner of the land located between Bokum Hill Road in Old Saybrook, Connecticut and Route 153 in Westbrook, Connecticut, described in Schedule A, which is attached to this Declaration ("The Preserve"). The Town of Westbrook has determined that it would be in the public interest to restrict the development and use of The Preserve.

RSD is willing, for NO MONETARY CONSIDERATION, to grant to the Town of Westbrook right to the restrictive covenant as hereinafter expressed concerning the areas described in this Declaration, to restrict the development and use of The Preserve.

NOW THEREFORE RSD for itself, its successors and assigns for consideration paid, including the mutual covenants in this agreement, does hereby Grant, Declare, and Convey WITH QUITCLAIM COVENANTS TO the Town of Westbrook the right and privilege as a restrictive covenant running with its title to the property described on Schedule A, as appurtenant to the title of the municipal property owned by and within the Town of Westbrook, and that the land herein described shall be sold, owned, conveyed, occupied, and used in accordance with its restrictions forever.

### **1. Restrictive Covenant**

(a) A Restrictive Covenant is hereby declared for the benefit of the Town of Westbrook, acting through its Board of Selectmen or its successor executive authority ("Executive Authority"), for the purpose of restricting the development and use of The Preserve forever and providing a method of enforcement and remediation if such development and use are not so restricted as covenanted in this Declaration.

(b) The land subject to the Restrictive Covenant will be The Preserve. Within The Preserve, RSD will construct improvements in accordance with the following conditions.

- (i) The Preserve shall have no more than 248 residential units on the real property designated as Parcel 1 in Schedule A and no more than 35 residential dwelling units on the real property designated as Parcel 2 in Schedule A.
- (ii) The Preserve may contain a private country club ("Country Club"). The Country Club may own and use the following facilities, including a golf course, a clubhouse, outdoor tennis and swimming facilities, storage facilities, and maintenance

facilities. The clubhouse may consist of a two-story building with a pro shop, locker rooms, lobby, offices, support area, and restaurant and social area. The total floor area of the clubhouse shall not exceed 11,000 square feet. The restaurant shall have no more than 75 customer seats and may operate under a restaurant liquor license. No more than 5,000 square feet of floor space separate from the finished portions of the clubhouse shall be provided for cart and golf bag storage. A maintenance building may be located on the golf course grounds.

- (iii) The Country Club shall own and use the golf course at all times. Residents and non-residents of The Preserve may become members of the Country Club. Westbrook residents shall always have the right to become members of the Country Club, subject only to the restrictions generally applicable to all members.
- (iv) Golf teams from the Westbrook High School shall have the right to use the golf course at no cost. Use by such teams, however, may be limited to business days at the Country Club's sole discretion. Use shall also be limited according to golf course rules applicable to all other users of the golf course and according to other reasonable limitations imposed by the Golf Course Club.
- (v) The Country Club will have two classes of membership, a full golf membership and a social membership. Social members will have the use of all facilities of the Country Club, except the golf course, for which usage shall be limited to ten rounds per year upon payment of a separate greens fee for each such round. Usage of the golf course shall be limited to members and their guests, except for special events such as high school golf team practice and play and member-guest and charity tournament events (for example, Rotary and United Way), as are customary at like private country clubs and generate no significant spectator participation beyond family and friends of participants. The Country Club's facilities shall not be rented to members for banquets and parties with more than 25 people in attendance, and they shall not be rented to non-members for any purpose.
- (vi) Tents over 200 square feet of ground coverage shall be prohibited at all places on the golf course grounds, including areas adjacent to the clubhouse, except under the following circumstances: Members of the golf course may apply to the Towns of Old Saybrook and Westbrook for permission to erect such a tent for a special event. The Town of Westbrook will have complete discretion to deny any such application with or without cause. Tents under 200 square feet of ground coverage shall be exempt from this requirement.
- (vii) The Preserve shall have a firehouse, subject to the approval and acceptance thereof by the Town of Old Saybrook. The firehouse may have one or more bays for equipment, an office, a secure storage area, a mud room, an accessory apartment or sleeping facilities to accommodate no more than one firefighter, and parking spaces for up to seven vehicles.
- (viii) The Preserve shall have a nature center. Its primary function will be to provide a gateway to the trail system throughout The Preserve. The center will consist of an

open-air, roofed pavilion with toilet facilities, and the total floor area of the center shall not exceed 500 square feet. The nature center shall not be expanded in size or function, unless approved by the Towns of Westbrook, the Town of Old Saybrook, and all other appropriate authorities. The nature center may have parking spaces for up to 12 vehicles. The nature center shall be used only for educational purposes, and there will be no structured programs or activities at the nature center.

- (ix) The Preserve may have a management office building with a meeting room for the homeowners association. The total floor area of this management office building shall not exceed 1,000 square feet. The management office building will have no more than ten parking spaces. A small retail convenience store of not more than 1,000 square feet of floor area may be located near the management office, with parking spaces as required by applicable zoning requirements.
- (x) The Preserve may have maintenance buildings, which shall not be open to public use. The maintenance buildings may include associated parking and storage yard areas. The Preserve also may have garages for storage of maintenance equipment. RSD reserves the right to construct additional maintenance space as necessary, so long as it is not open to public use
- (xi) The Preserve may have additional improvements, which may include sewer pumping stations, water facilities, antennae, and communication systems, and facilities and structures associated with access, use, utility, drainage, maintenance, and management of The Preserve.

(c) No improvements other than those listed in section 1(b) of the Restrictive Covenant shall be constructed within The Preserve for a period of 50 years from the date of the execution of this declaration, except with the permission of the Town of Westbrook acting through its Executive Authority, after consultation with such other agencies and professionals it deems appropriate.

(d) The Preserve shall not be used in a manner contrary to the description of improvements in section 1(b) of the Restrictive Covenant for a period of 50 years from the date of the execution of this declaration, except with the permission of the Town of Westbrook acting through its Executive Authority, after consultation with such other agencies and professionals it deems appropriate.

(f) Upon written notice to RSD or its successor owner of the restricted facilities, officials of the Town of Westbrook or their professional agents and employees may have access to the nature center, the Country Club, the firehouse, and other restricted facilities to the extent necessary to ensure compliance with the conditions of section 1(b) of the Restrictive Covenant. All inspections shall be during business hours and will be in such manner as to minimize disturbance of the owners or occupants of The Preserve.

## **2. Parking Lot and Trail Access.**

(a) RSD will construct and maintain at or near the nature center a public parking lot for no more than 12 cars, which shall be located conveniently for access to the trail system to be constructed through The Preserve.

(b) Upon such construction, RSD grants to the Town of Westbrook an easement to permit the authorized citizens thereof the right to park vehicles and have access to the trail system. RSD or its successor owner may post and enforce reasonable rules and restrictions on the use and perambulation of the parking areas and trails as a condition of continued use.

(c) This dedication will be subject to release from liability under Section 52-557f of the Connecticut General Statutes.

### 3. General Provisions

The foregoing restrictions and easements will be administered in accordance with the following:

(a) In the event that there is a violation of this declaration, the Town of Westbrook may, by written notice to RSD or its successor owner of the restricted facilities, send by certified mail, return receipt requested, to the address of RSD as shown on this declaration or its successor owner of the restricted facilities as shown on the records of the Tax Assessor of the Town of Old Saybrook, an order that the condition constituting a violation be remedied. If RSD or its successor owner of the restricted facilities protests, the Town of Westbrook shall hold a hearing for the purpose of determining the violation and a finding, plan, and order of remedy and restoration, which shall be promptly fulfilled by RSD or its successor owner of the restricted facilities upon such order and finding.

(b) If any provision of this declaration or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of the declaration and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

(c) If any part of The Preserve shall be taken by condemnation or similar proceeding, this declaration shall automatically terminate as to that portion so taken, so that the RSD, its successors and assigns may be as fully compensated as if this declaration had never been granted.

(d) Upon thirty-five (35) days' written request from RSD, a lender to RSD, a proposed lender to RSD, or its successor owner of the restricted facilities, the Town of Westbrook, following consultation from the such boards and environmental control agencies or consultants if deemed necessary, will provide a certificate in recordable form, executed by its agent duly authorized, that the Restrictive Covenant in this declaration are not in violation, or if a violation exists, the nature and extent of violation and actions necessary to cure any violations. The certificate will be returned to the RSD or party requesting the certificate within (35) thirty-five days of the request. If no response is received in such period, the requestor may file an affidavit to that effect, which will be deemed to be notice of no violation. The affidavit or certificate will be binding on the Town of Westbrook as of its date, but it will not release the RSD or its successor owner of the restricted facilities of any obligation of compliance as to any occurrence after such date.

(e) Amendment of this declaration may be made by the agreement of the parties, RSD or its successor owner of the restricted facilities acting by its chief executive officer after proper authorization, and the Town of Westbrook acting by its Executive Authority.

(f) Enforcement of the provisions of this Declaration may be made by any action at law or equity, but violation will not result in forfeiture of title nor the creation or imposition of any lien on the premises without judicial action for attachment and execution for damages.

(g) No rights are granted or dedicated herein to the public except as specifically set forth herein or to any party but the parties to this Declaration.

Address of RSD:

River Sound Development, LLC

[ ], CT 06

Address of the Town of Westbrook:

Town Hall  
1163 Boston Post Road  
P.O. Box 676  
Westbrook, CT 06496-0676

TO HAVE AND TO HOLD the said rights and interests in the Restrictive Covenant herein granted unto the said the Town of Westbrook its successors and assigns forever, as beneficiary, to itself and not as a public way nor to the citizens of Westbrook nor the general public except as specifically set forth herein.

IN WITNESS WHEREOF, RSD has executed and sealed this document the day, month and year first above written.

Counterparts, signed, sealed and delivered in the presence of:

RIVER SOUND DEVELOPMENT LLC

By

Its

